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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re B.O. et al., Persons
Coming Under the Juvenile
Court Law.

2d Juv. No. B295505
(Super. Ct. Nos. 18JV00445,
18JV00446)
(Santa Barbara County)

SANTA BARBARA COUNTY
CHILD WELFARE SERVICES,

Plaintiff and Respondent,

v.

S.O.,

Defendant and Appellant.

S.O. (Mother) appeals a dispositional order of the juvenile court concerning her children, B.O. and A.O., following the filing of a juvenile dependency petition (Welf. & Inst. Code, § 300, subd. (b)(1))¹ by the Santa Barbara County Child Welfare Services

¹ All statutory references are to the Welfare and Institutions Code.

(CWS). The order provides that S.O. receive family reunification services and that B.O. and A.O. remain in out-of-home care. We conclude 1) the juvenile court's order is supported by substantial evidence, and 2) CWS made a mistake on its notices sent to Indian tribes under the Indian Child Welfare Act (ICWA) (25 U.S.C. § 1901 et seq.). We affirm the dispositional order and issue a "limited remand" to the juvenile court with directions to "comply with inquiry and notice provisions of the ICWA." (*In re Veronica G.* (2007) 157 Cal.App.4th 179, 188.)

FACTS

In 2012, B.O.'s father shook B.O. so hard that the baby became "limp and unresponsive." At the hospital a cat scan revealed that B.O. had a "bilateral brain bleed." Mother knew father had been shaking the baby. CWS said it learned that Mother was diagnosed with a bipolar disorder and had "a history of methamphetamine use." B.O. was taken into protective custody. Mother was ordered to participate in "Family Maintenance services," and B.O. was eventually returned to Mother's custody.

In 2017, CWS "received a referral" that Mother allowed the maternal grandmother to care for B.O. and A.O. because Mother had "mental health issues." In a therapy session, Mother said if the maternal grandmother returned the children to her, "she would not be able to care for them." Mother ultimately made arrangements with the maternal grandmother to take care of the children, and CWS closed the case.

In January 2018, CWS learned that Mother "was suicidal." CWS said, "There was concern that . . . mother may harm herself and/or the children due to her severe depression." CWS determined that "the allegation of Caretaker Absence/Incapacity

was . . . unfounded.” Mother made arrangements for the maternal grandmother to take care of the children.

On August 22, 2018, Mother made “an unsuccessful suicide attempt” by using pills. The children “witnessed the ambulance take their mother away and were very scared.” CWS said Mother stated that she would no longer have the grandmother take care of her children, “thereby removing the person . . . mother had previously, regularly arranged to care for the children when feeling overwhelmed and/or suicidal.” A protective custody warrant was issued for the children.

CWS filed a juvenile dependency petition alleging that there was a substantial risk the children will suffer “serious physical harm” because of Mother’s inability to protect them. CWS said Mother had a “long history of mental health concerns that have resulted in suicidal ideation, as well as numerous psychiatric holds for being a danger to herself.” A CWS worker discussed with Mother the “potential emotional damage and physical danger” the children were subject to because Mother had “overdosed on her medication.” CWS said Mother “did not seem to understand” that concern and had stated “her children were never in danger.” Mother told a CWS worker, “I cannot work and have my kids. I have to choose between work and them. My anxiety is getting worse and I think I’m going to have to choose work.” She later told that worker she was “stressed about financial issues.” In “quick and rambling” speech, she told the CWS worker, “I’m getting to the breaking point.”

At a November 7, 2018, detention hearing, the juvenile court found the children came under section 300 and “continuance in the home of the parent [was] contrary to the children’s welfare.”

In a jurisdiction report, CWS requested that the juvenile court find the allegations of the petition to be true and that the children remain in out-of-home care pending a disposition hearing.

After a contested jurisdiction hearing, the juvenile court sustained the petition and found the children were persons described by section 300. It found the children were at risk because of Mother's "long history and involvement" with CWS and her "mental health history."

In a disposition report, CWS stated the children were currently placed with their maternal grandparents. It recommended the parents be ordered to participate in family reunification services. CWS said, "[M]other continues to treat her mental health and reports to be now on the right medication and feels well; however, CWS believes that [Mother] needs to demonstrate over a significant period of time that she can participate in mental health services consistently and stabilize her mental health symptoms in order to reunify with her children."

At the disposition hearing, social worker Gloria Perez testified Mother was receiving counseling and "individual therapy." Perez could not recommend that the children "be returned to [Mother's] care in family maintenance." Mother had "mental health issues in the past" and "some suicidal attempts that were recent." She had received "crisis services" three times during the past year. Mother has been diagnosed with severe depression, anxiety, and an "obsessive compulsive disorder." Before the children could be returned, Mother needs "an additional six months of family reunification services."

Mother testified that CWS reports about what she had said about her children were not accurate. When she was initially “struggling with suicidal ideation,” a therapist asked her about her children. Mother told the therapist, “[N]obody else can really take care of my kids but me so that’s why I need to get better.” She is receiving therapy about “regulating emotions and being able to cope with them.” Mother is employing those “coping skills.” She had one “panic attack” since the “August 21st incident” in October. Mother used her coping skills to deal with that attack. Since October, she has not had a panic attack. She is only working part time. She has housing assistance, transportation, and her own vehicle. She has a plan for the children to go to “a day care provider on the days” that she works.

The juvenile court found, “[Mother] is doing much better than she was in the past. . . . [R]eunification services are to be offered.” “But I do find by clear and convincing evidence that at this time there is a risk to the children to return to [Mother].” The court set a six-month review date.

DISCUSSION

Substantial Evidence

Mother contends “there was no evidence [her] children would be in substantial danger if returned to [her] custody under supervision of [CWS] and the court.” She claims the juvenile court erred by issuing the removal order that separated her from her children. We disagree.

The juvenile court found “there is a risk to the children” if they would be returned to Mother at the present time.

The juvenile court may remove children from the parent’s home where there is a substantial danger to the children’s health or safety “if the minor were returned home.” (Welf. & Inst. Code,

§ 361, subd, (c)(1).) “‘A removal order is proper if it is based on proof of (1) parental inability to provide proper care for the minor and (2) potential detriment to the minor if he or she remains with the parent.’” (*In re Francisco D.* (2014) 230 Cal.App.4th 73, 83.) “Upon satisfying these prongs, the removal is appropriate even if the parent is not dangerous and the minor at issue has not yet been harmed.” (*Ibid.*) The court’s focus is on preventing harm to the children. (*Ibid.*)

In deciding whether substantial evidence supports the juvenile court’s findings, we draw all reasonable inferences in support of the court’s order. (*In re Francisco D.*, *supra*, 230 Cal.App.4th at p. 82.) We do not weigh the evidence, resolve evidentiary conflicts, or decide the credibility of the witnesses. (*Ibid.*)

Mother cites evidence that she was currently receiving “correct medication and proper mental health services.” But the issue is not whether some evidence supports appellant, it is whether substantial evidence supports the court’s order. But, even so, Mother concedes that “she was not completely healed of her mental health issues.” She claims she had “stabilized,” but she notes that was only for a period of “the past four months” and she had a “panic attack” during that period.

The juvenile court properly considered the entire record. It had sustained the allegations of the petition involving Mother’s failure to protect these children. It considered Mother’s progress, but it also found the children would be at risk in her care at the present time. CWS contends there is substantial evidence to support the court’s at-risk findings. It states, “Mother had significant mental health issues such that it would have been

detrimental to the Children's emotional and physical safety to return to Mother." We agree.

CWS received a referral that on August 22, 2018, Mother had attempted "suicide" by "overdosing on her prescription pills and then calling emergency services." Her children witnessed "the ambulance take [Mother] and they were very scared." CWS received information that Mother "had a history of suicidal thoughts and had been placed on numerous psychiatric holds for being a danger to herself."

In a report to the juvenile court, CWS said that Mother has demonstrated "*a pattern of instability which places the children at risk of serious emotional damage as well as physical harm.*" (Italics added.) "[M]other has significant CWS history with concerns about *suicidal ideation* and her ability to care for the children. . . . [She] continues to become overwhelmed, on occasions to the extent she attempts *to harm herself.*" (Italics added.) She has "little or no insight into how her behaviors [a]ffect the children." Her apartment was "in disarray, with trash, children's items, clothing, bags, food, and [miscellaneous] items all littered throughout the rooms." Mother told a CWS worker that she could "not work and have [her] kids." She said, "I have to choose between work and them. My anxiety is getting worse and I think I'm going to have to choose work." On November 1, 2018, Mother told a CWS worker, "I'm getting to the *breaking point.*" (Italics added.)

CWS also notes Mother "minimized" the impact her mental health problems had on her children. During her prior testimony, Mother said she was "indirectly trying to hospitalize [herself]" by taking a lot of pills. She said, "I guess I kind of knew I would be hospitalized and I would probably finally get the help I

need that I wasn't getting." The juvenile court could reasonably infer that Mother had not considered her children's interests, and her mental health problems posed a serious risk for them. The court noted Mother's recent progress and improvement. But that involved a very short time period. From Perez's testimony, it could reasonably find Mother was not currently ready to take care of her children.

ICWA

Mother contends CWS did not comply with its responsibility to provide proper notice to the Indian tribes under ICWA.

"ICWA protects the interests of Indian children and promotes the stability and security of Indian tribes by establishing minimum standards for, and permitting tribal participation in, dependency actions." (*In re K.M.* (2009) 172 Cal.App.4th 115, 118.) "The juvenile court and social services agencies have an affirmative duty to inquire at the outset of the proceedings whether a child who is subject to the proceedings is, or may be, an Indian child." (*Id.* at pp. 118-119.) The social services agency has a duty to give proper notice to relevant tribes. "The object of tribal notice is to enable a review of tribal records to ascertain a child's status under ICWA." (*Id.* at p. 119.)

On November 30, 2018, CWS received an e-mail from the maternal grandmother indicating the family had Native American Indian heritage from the "Cherokee," "Choctaw," and "Blackfoot" tribes. In December 2018, CWS received additional information on an ICWA questionnaire. In January 2019, CWS sent ICWA notices to the three tribes.

But CWS now concedes that its ICWA notices “omitted specific tribal affiliations as to each relative.” It states that it will re-send the ICWA notices.

DISPOSITION

The juvenile court’s disposition order is affirmed, “and the matter is remanded to the juvenile court with directions to comply with inquiry and notice provisions of the ICWA.” (*In re Veronica G., supra*, 157 Cal.App.4th at p. 188.)

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GILBERT, P. J.

We concur:

PERREN, J.

TANGEMAN, J.

Arthur A. Garcia, Judge

Superior Court County of Santa Barbara

Jacques Alexander Love, under appointment by the
Court of Appeal, for Defendant and Appellant.

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